

IN THE HIGH COURT OF UTTRANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2) (b))

W.P. No. 1196 (M/S) of 2001

Date of decision:- 08-06-2006

A.F.R. (Approved for Reporting)

~~Not approved for reporting~~

Date :- 08-6-2006

Initial of Judge

Note :- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

COURT OF UTTARANCHAL AT NAINITAL

**Criminal Misc. Writ Petition No.1196 / 2001 (M/S)
(Old No. 25055 / 93)**

Surendra Singh S/o Shri Trilok Singh
R/o Kolso, P.C. Bagauli
Tehsil Karanprayag
District Chamoli (Gopeshwar) Petitioner
Versus

1. Smt. Shakuntala Devi
W/o Shri Surendra Singh
R/o P.C. Dewar Tehsil Chamoli
2. Sessions Judge, Chamoli, Gopeshwar
3. Chief Judicial Magistrate,
Chamoli, Gopeshwar Respondent

Hon'ble J. C. S. Rawat, J.

1) This writ petition has been filed with the prayer to issue a writ, order or direction in the nature of certiorari quashing the impugned judgment and orders dated 29.03.1993 and 09.01.1992 passed by the Sessions judge, Chamoli, Gopeshwar and Chief Judicial Magistrate, Chamoli, Gopeshwar respectively (Annexure I & II).

2) Brief facts of the case are that on 05.08.1987 the respondent No.1-Smt.Shakuntala Devi filed an application before the Magistrate under section 125 Cr.P.C. against her husband-Surendra Singh. It was alleged in the application under section 125 Cr.P.C. that the marriage was solemnized in between the respondent No.1 and petitioner in the year 1992. Thereafter, she was discharging her matrimonial obligations towards the petitioner and she was residing with him. Later on, when she fell ill and the petitioner asked her parents to take in their house for medical treatment. Thereafter, the petitioner took her to her parental house. The petitioner did not take her back to her matrimonial house and did not pay any maintenance allowance. As

such, the petitioner had neglected to maintain his wife. It was further alleged that the petitioner is an government employee and he earns Rs.1400-1500/- per month and apart this he also earns a handsome money from the agricultural land. The respondent No.1 had claimed Rs.500/- p.m. as maintenance.

3) The written statement was filed by the petitioner denying all the averments made in the application filed under section 125 Cr.P.C. The petitioner had further stated in the written statement that he is ready to take her back to his house, but his wife is not ready to come to discharge the matrimonial obligations and as such the application for maintenance may be rejected.

4) The parties were directed to adduce their evidence in support of their evidence. The respondent no.1 had examined himself himself as PW1 and the supported the averments made in the application under section 125 Cr.P.C. She had also stated that the petitioner had filed the suit for dissolution of marriage. The petitioner had not adduced any evidence in rebuttal.

5) After appreciation of evidence on record, vide order dated 9.1.1992 the learned Magistrate allowed the application under section 125 Cr.P.C. and the petitioner was directed to pay maintenance to his wife @ Rs.400/- p.m. from the date of filing of application for maintenance i.e. 5.8.1987. Feeling aggrieved by the order of the learned Magistrate, the petitioner preferred a revision before the Sessions Judge and the same was dismissed on 29.03.1993. Feeling aggrieved by this, the writ petition before this Court.

6) At the outset, I would like to mention here that the petitioner could have file a petition under section 482 Cr.P.C. but the petitioner had not taken the recourse to file the petition under section 482 Cr.P.C. As such, the

present writ petition is not maintainable because the efficacious remedy under section 482 Cr.P.C. was available to the petitioner. The matter is very old and the parties are prosecuting this petition since 1993. Both the courts below had given concurrent finding. It would not be just and proper to dismiss this petition only on the ground of maintainability. I do not find any merit in the petition. The concurrent findings had been given both the courts below. The petitioner had sufficient means to pay maintenance. He had neglected to maintain his wife. I am completely in agreement with the findings recorded by the courts below in this regard.

7) Learned counsel for the petitioner had not challenged the propriety of the findings recorded by both the courts below. The wife had proved in her evidence that the petitioner had sufficient means to pay the maintenance and he had neglected to maintain her. The wife appeared before the court below as PW1 and she supported the averments made in the application under section 125 Cr.P.C. It had been amply proved by the evidence that after solemnization of marriage the respondent No.1-wife was discharging her matrimonial obligations and when she fell ill her husband asked her parents to take her in their house. The respondent no.1 was sent to her parental house for few days. After some time, the parents of respondent no.1 requested the petitioner to take her wife back, but the petitioner did not pay any heed to their request and she was not taken to her matrimonial house in spite of repeated requests. The maintenance was demanded but no maintenance was given by the petitioner. The respondent No.1-wife had stated in her evidence that her husband earns Re. 1400 to 1500/- p.m. and he also earns handsome money from the agricultural land. The said statement is

unrebutted and as such the evidence of respondent no.1 is believable. Both the courts below had given the concurrent findings. It is pertinent to mention here that the petitioner-husband had filed a petition for dissolution of marriage. The evidence of petitioner was recorded in the petition regarding dissolution of marriage and the petitioner has specifically stated that he is not ready to take her back and as such the said evidence was also considered by both the courts below. In view of the above, I am completely in agreement with the findings recorded by both the courts below. The petitioner had sufficient means to pay maintenance. He had neglected to maintain her wife.

8) Learned counsel for the petitioner has only contended that the court below has awarded the interim maintenance from the date of filing of application and not from the date of its order. It was further contended that no reason has been given for awarding the interim maintenance from the date of application filed by the wife. Learned counsel for the petitioner contended that if the court below was intended to award the interim maintenance from the date of application, the court should have recorded its reasons for doing so. Section 125(2) Cr.P.C. provides as under:-

“Any such allowance for the maintenance or interim maintenance and expenses for proceeding shall be payable from the date of order, or, if so ordered, from the date of the application for maintenance or interim maintenance and expenses of proceeding, as the case may be.”

9) From perusal of the sub-section 2 of section 125 Cr.P.C. reveals that in the normal circumstance the

maintenance must be given from the date of order and in case of extraordinary circumstances it may also be ordered to be paid from the date of filling of application. The court below should have discussed about such circumstances in which the interim maintenance was awarded from the date of filling of application. No other inference is permissible from the language of sub-section 2. The court below had not given any reason for allowing the interim maintenance from the date of application. As such, I am inclined to accept the contention of the petitioner. Therefore, the impugned order is modified to the extent that the husband-Surendra Singh will pay the interim maintenance from the date of impugned order and not from the date of application.

10) The petition is disposed of accordingly. All the pending miscellaneous application(s) in this case, if any, shall stand disposed of accordingly.

(J.C.S.Rawat, J.)

Dated 08.06.2006

LSR